

AMENDING THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 WITH RESPECT TO THE RESPONSIBILITIES OF THE SECRETARY OF HEALTH AND HUMAN SERVICES REGARDING BIOLOGICAL AGENTS AND TOXINS, AND AMENDING TITLE 18, UNITED STATES CODE, WITH RESPECT TO SUCH AGENTS AND TOXINS, TO CLARIFY THE APPLICATION OF CABLE TELEVISION SYSTEM PRIVACY REQUIREMENTS TO NEW CABLE SERVICES, TO STRENGTHEN SECURITY AT CERTAIN NUCLEAR FACILITIES, AND FOR OTHER PURPOSES

NOVEMBER 6, 2001.—Ordered to be printed

Mr. TAUZIN, from the Committee on Energy and Commerce,
submitted the following

SUPPLEMENTAL REPORT

[To accompany H.R. 3016]

This supplemental report shows the cost estimate of the Congressional Budget Office with respect to the bill (H.R. 3016), as reported, which was not included in part 1 of the report submitted by the Committee on Energy and Commerce on October 9, 2001 (H. Rept. 107-231 pt. 1).

This supplemental report is submitted in accordance with clause 3(a)(2) of rule XIII of the Rules of the House of Representatives.

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COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by

the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 17, 2001.

Hon. W.J. "BILLY" TAUZIN,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3016, a bill to amend the Antiterrorism and Effective Death Penalty Act of 1996 with respect to the responsibilities of the Secretary of Health and Human Services regarding biological agents and toxins, and to amend title 18, United States Code, with respect to such agents and toxins, to clarify the application of cable television system privacy requirements to new cable services, to strengthen security at certain nuclear facilities, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lisa Cash Driskill (for federal costs), Leo Lex (for the state and local impact), and Lauren Marks (for the private sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3016—A bill to amend the Antiterrorism and Effective Death Penalty Act of 1996 with respect to the responsibilities of the Secretary of Health and Human Services regarding biological agents and toxins, and to amend title 18, United States Code, with respect to such agents and toxins, to clarify the application of cable television system privacy requirements to new cable services, to strengthen security at certain nuclear facilities, and for other purposes

Summary: CBO estimates that implementing H.R. 3016 would cost \$2 million in 2002 and \$64 million over the 2002–2006 period, assuming appropriation of the necessary amounts, for administering enhanced guidelines and procedures for the use of certain biological or toxic agents. The bill also would allow cable operators to provide law enforcement officials with information regarding subscribers' services without notifying customers, and it would strengthen security requirements at nuclear facilities. CBO estimates that enacting these two provisions would result in no net cost to the federal government. The bill could affect governmental receipts by increasing certain civil and criminal penalties; therefore, pay-as-you-go procedures would apply. However, CBO estimates that any resulting increase in receipts would be less than \$500,000 annually. Any increase in criminal penalties would cause an increase in direct spending from the Crime Victims Fund, but CBO estimates that such spending also would be less than \$500,000 annually.

H.R. 3016 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs of those mandates would not exceed the threshold es-

established in UMRA (\$56 million in 2001, adjusted annually for inflation).

H.R. 3016 also would impose private-sector mandates as defined in UMRA by requiring laboratories possessing designated biological agents to register with the Centers for Disease Control (CDC), prohibiting certain individuals from handling specific biological agents, and requiring security upgrades at nuclear facilities. CBO estimates that the cost of registering with the CDC would be small, and further that the cost to comply with new restrictions on handling biological agents would be minimal. The new requirements on nuclear facilities would depend on specific standards that would be established by the Nuclear Regulatory Commission (NRC). Costs to nuclear facilities could be substantial but the NRC could not provide any information about the requirements that might be included in the new regulations. Thus, CBO cannot estimate the cost of compliance and cannot determine whether the aggregate direct cost of mandates in the bill would exceed the annual threshold for the private sector established in UMRA (\$113 million in 2001, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3016 is shown in the following table. The costs of this legislation fall within budget functions 550 (health) and 270 (energy).

	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ¹					
CDC spending: ²					
Estimated authorization level	7	15	15	16	16
Estimated outlays	2	14	16	16	16

¹ H.R. 3016 also would affect revenues and direct spending, but CBO estimates that the amounts of such effects would be less than \$500,000 a year.

² A full year appropriation for the CDC has not yet been enacted for fiscal year 2002. In 2001 the agency received an appropriation of nearly \$9 billion. H.R. 3016 would also increase costs for the NRC by \$10 million over the 2002–2003 period, subject to appropriation of the necessary funds. The net budgetary effect of an increase in NRC costs would be negligible, however, because the agency is required to offset its costs through annual fees collected from the nuclear industry.

Basis of estimate

CBO estimates that implementing H.R. 3016 would cost \$64 million over the 2002–2006 period, assuming appropriation of the necessary amounts. The bill would have an insignificant impact on revenues and direct spending.

Spending subject to appropriation

Bioterrorism Prevention.—Section 101 of the bill would expand the responsibilities of the Secretary of the Department of Health and Human Services (HHS) with regard to the regulation of certain biological agents and toxins. Under current law, HHS requires facilities that transfer or obtain certain biological agents to register with the government, disclose the type of agent being transferred or obtained, and state its intended use. HHS administers that registry through the CDC’s Select Agent Transfer Program. The bill would require HHS to establish and enforce standards and procedures governing the possession and use of a broader set of biological agents and toxins. Under those new standards and procedures, facilities that possess and use those biological agents and toxins would be required to register with HHS. The bill would also create

new criminal penalties for certain persons who violate new and existing registration rules.

Although the bill does not specify that CDC would administer the broadened registry, CBO assumes that HHS would build on CDC's existing registry. The bill would substantially increase the number of facilities that are required to register from about 250 laboratories under the current CDC program to tens of thousands under the broader requirements of the bill. Although HHS does not know how many facilities would have to register under the bill, a recent article in *The Wall Street Journal* (October 11, 2001) suggests that there are 5,500 laboratories that store large quantities of agents and an additional 150,000 clinical laboratories that hold smaller quantities of these agents.

According to the CDC, administering the current registry costs about \$1 million year. Based on that figure and on HHS's experiences developing and operating data banks of health care providers and practitioners, CBO estimates that it would cost HHS \$7 million to develop the expanded registry and about \$15 million a year for operation and enforcement activities related to the registry. Assuming the appropriation of the necessary amounts, spending to implement this provision would total \$2 million in 2002 and \$64 million over the 2002–2006 period.

Cable Television Privacy.—H.R. 3016 would allow cable television operators to provide law enforcement officials with information regarding subscribers' services without notifying their customers that such information has been provided. CBO estimates that this provision would have no significant impact on the federal budget.

Nuclear Facility Security.—H.R. 3016 would require the NRC to conduct a study of the vulnerability of nuclear facilities to certain threats, and report to the Congress. According to the NRC, the study would require testing the reaction of materials used at nuclear facilities to several types of destructive forces. Based on information from the NRC, CBO estimates that such studies would cost \$7 million in 2002. The bill also would require a rulemaking to update the design basis threat (DBT)—the attack scenario the nuclear facilities must be capable of defeating. Based on information from the NRC, CBO estimates that updating the DBT rule to meet the new scenarios outlined in the bill would cost \$3 million over the 2002–2003 period. Because the NRC has the authority to collect annual charges from its licensees to offset the agency's general fund appropriation, the net cost of the provision would be zero.

Direct spending and revenues

H.R. 3016 would establish new civil and criminal penalties, which are considered governmental receipts (i.e., revenues). Specifically, the bill would direct the Secretary of HHS to establish regulations governing the possession and use of certain biological agents and toxins. Those who violate such regulations would be subject to civil fines. The bill also would strengthen the criminal penalties for the sabotage of nuclear production, utilization, or waste storage facilities. CBO estimates that enacting these new penalties would increase governmental receipts by less than \$500,000 a year. Any criminal fines collected would be deposited in the Crime Victims Fund and spent in subsequent years. Any re-

sulting change in direct spending from the fund also would amount to less than \$500,000 annually.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting H.R. 3016 would result in changes in direct spending and governmental receipts of less than \$500,000 a year.

Estimated impact on State, local, and tribal governments: Section 101 of H.R. 3016 would require clinical and research laboratories that possess biological agents or toxins that could be used for terrorist or criminal purposes to register with the federal government. For laboratories affiliated with or operated by state and local governments, those requirements would be intergovernmental mandates as defined in UMRA. Laboratories that transport these agents or toxins are currently required to register with the CDC, but this provision would expand registration requirements to all laboratories that possess agents or toxins, regardless of whether they transport or ship them. CBO estimates that the cost of complying with the new requirements would total about \$10 million annually for state and local governments.

Section 305 also contains an intergovernmental mandate because it would require the NRC to issue new regulations requiring security upgrades at nuclear facilities. These regulations would affect the small percentage (less than 5 percent) of nuclear facilities owned by state and local governments and non-power-producing research reactors at public universities. While those regulations could impose significant costs, the number of nuclear facilities owned by state and local governments is small. According to information from the Nuclear Energy Institute, there are two power-producing reactors that are owned by a state entity, and a handful of other such reactors with partial public ownership. In addition, the likelihood that public universities, which only house non-power reactors, would face a significant cost increase because of heightened security measures is small.

The remaining provisions of the bill contain no intergovernmental mandates and would impose no costs on state, local, or tribal governments. CBO estimates that the total cost of intergovernmental mandates in the bill would not exceed the threshold in UMRA (\$56 million in 2001, adjusted annually for inflation).

Estimated impact on the private sector: H.R. 3016 also would impose private-sector mandates as defined in UMRA by requiring laboratories possessing designated biological agents to register with the CDC, prohibiting certain individuals from handling specific biological agents, and requiring security upgrades at nuclear facilities. CBO estimates that the cost of registering with the CDC would be small, and further that the cost to comply with new restrictions on handling biological agents would be minimal. The new requirements on nuclear facilities would depend on specific standards that would be established by the Nuclear Regulatory Commission. Costs to nuclear facilities could be substantial but the NRC could not provide any information about the requirements that might be included in the new regulations. Thus, CBO cannot estimate the cost of compliance.

Section 101 would impose a private-sector mandate by requiring clinical and research laboratories in possession of biological agents

or toxins that could be used for terrorist or criminal purposes to register with the federal government. Currently, laboratories—including universities, research institutions, private companies and commercial suppliers—that transport certain biological agents or toxins must register with CDC and certify that their laboratories meet certain safety standards. The bill would expand such registration requirements to all laboratories that possess the designated agents, regardless of whether they transport or ship them. CBO estimates that the cost for an individual laboratory to register with CDC would be minimal and, consequently, that the total cost for all affected laboratories to comply with the mandate would be small. Section 101 also would impose a private-sector mandate on certain persons engaged in handling specific biological agents or toxins in interstate or foreign commerce. The bill would make it illegal for restricted persons, as defined in the bill, to ship, transport, receive, or possess select biological agents. According to the CDC, the number of entities affected by this restriction would be limited. CBO estimates, therefore, that the cost to comply with the mandate would be minimal.

Section 305 would require the NRC to issue new regulations addressing security threats at facilities licensed by the NRC. Licensed facilities that are privately owned or operated include power plants and other fuel cycle installations. In preparing the new regulations, the NRC would be required to consider, among other things, water-based and air-based threats, the use of explosive devices and other modern weaponry, and the protection of spent fuel storage pools and dry cask storage. NRC's rulemaking would be based upon the results of a nine-month study of facility vulnerability and consultation with other federal agencies. Because the agency could not give any indication as to the scope of the new regulations, CBO has no basis for determining the cost to the private sector of complying with the new regulations.

Because the cost to comply with mandates imposed by the bill would depend in large part on future actions of the NRC, CBO cannot determine whether the aggregate direct cost to private-sector entities of complying with all of the mandates in the bill would exceed the annual threshold specified in UMRA (\$113 million in 2001, adjusted annually for inflation).

Estimate prepared by: Federal costs: Lisa Cash Driskill (NRC), Lanette J. Walker (cable television privacy provisions), and Jeanne De Sa (CDC); impact on State, local and tribal governments: Elyse Goldman; impact on the private sector: Lauren Marks (NRC), and Paige Piper/Bach (CDC and cable television), and Jen Bullard Bowman (CDC).

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

EXCHANGE OF COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
 COMMITTEE ON THE JUDICIARY,
Washington, DC, October 16, 2001.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: In recognition of the desire to expedite floor consideration of H.R. 3016, the Committee on the Judiciary hereby waives consideration of the bill and consents to be discharged from further consideration of the bill. H.R. 3016, as introduced and reported by the Committee on Energy and Commerce, contains subject matter that falls within the legislative jurisdiction of the Committee on the Judiciary.

The Committee on the Judiciary takes this action with the understanding that the Committee's jurisdiction over the provisions within the Committee's jurisdiction is in no way diminished or altered, and that the Committee's right to the appointment of conferees during any conference on the bill is preserved.

Sincerely,

F. JAMES SENSENBRENNER, Jr.,
Chairman.

HOUSE OF REPRESENTATIVES,
 COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, October 16, 2001.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary, House of Representatives,
Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN SENSENBRENNER: Thank you for your letter regarding to H.R. 3016.

I appreciate your willingness not to exercise your referral of H.R. 3016. I agree that your decision to forgo action on the bill will not prejudice the Committee on the Judiciary with respect to its jurisdictional prerogatives on this or similar legislation. Further, I recognize your right to request conferees on those provisions within the Committee on the Judiciary's jurisdiction should they be the subject of a House-Senate conference.

I will include your letter and this response in the Committee's supplemental report on H.R. 3016, and I look forward to working with you as we bring antiterrorism legislation to the Floor.

Sincerely,

W.J. "BILLY" TAUZIN,
Chairman.